

REMARKS

Claims 1-22, 25, and 27-38 remain in the referenced application. Claims 1 and 14 have been amended. Claims 23, 24, and 26 have been canceled. Claim 47 has been added.

The Declaration has been objected to on the basis that application number 10/606,007 appears to be a non-provisional application. Application number 10/606,007 was originally filed as a non-provisional application. Nevertheless, in a paper dated December 17, 2003, a copy of which is enclosed herewith, Applicant petitioned under 37 C.F.R. §1.53(c)(2) for application number 10/606,007 to be converted from a non-provisional application to a provisional application. Applicant accordingly respectfully submits the provisional designation for application number 10/606,007 contained in the Declaration is in fact correct. Applicant therefore respectfully requests the objection to the Declaration be withdrawn.

The specification, on page 1, in the first paragraph, stands objected to on the basis that the reference made to application number 10/606,007 is incorrect. Based upon the preceding argument with respect to the Declaration, Applicant respectfully submits the reference made to application number 10/606,007 on page 1 of the specification is in fact correct. Applicant accordingly respectfully requests the objection to page 1 of the specification be withdrawn.

The specification, on page 11, line 1, stands objected to on the basis that the phrase “living canopy 161” should read “living canopy 151”. Reference numeral 151 denotes the skirt for the protective structure. Applicant accordingly respectfully submits reference numeral 151 is incorrect for reference to the “living canopy”. “Living canopy” denotes one embodiment for the cover 160 shown in Figure 2d. It is therefore incorrect to apply a reference numeral to the term “living canopy”. Applicant has thus deleted reference numeral “161” from the specification, thereby overcoming the objection to page 11 of the specification.

Claims 24-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/738,236. The Examiner admits claims 24-38 are not identical to claims 1-16 of copending Application No.

10/738,236. The Examiner however asserts claims 24-38 would have been obvious to one of ordinary skill in the art at the time the invention was made in view of claims 1-16 of copending Application No. 10/738,236. As the outstanding rejection is based upon the judicially created doctrine of obviousness-type double patenting, Applicant submits herewith a Terminal Disclaimer and \$65.00 statutory fee due under 37 C.F.R. §1.20(d) to overcome the outstanding rejection. In view of the submission of the Terminal Disclaimer, Applicant respectfully submits the rejection of claims 24-38 has been overcome and thus requests the withdrawal of the provisional rejection of claims 24-38 under the judicially created doctrine of obviousness-type double patenting over claims 1-16 of copending Application No. 10/738,236.

Claims 1-6, 8-13, and 17 stand rejected under 35 U.S.C. §102(b) by *Quail On Small Woodlands*, Woodland Fish and Wildlife Project Publication, July 1996 (hereinafter referred to as Woodland Fish and Wildlife). Responsive to the above-recited rejection, Applicant has canceled claims 23, 24, and 26 and incorporated the limitations contained therein into claim 1. Applicant accordingly respectfully submits the rejection of claims 1-6, 8-13, and 17 under 35 U.S.C. §102(b) by Woodland Fish and Wildlife is now moot.

Claim 7 stands rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Rayborn (U.S. Patent No. 5,924,126). Responsive to the above-recited rejection, Applicant has canceled claims 23, 24, and 26 and incorporated the limitations contained therein into claim 1. Applicant accordingly respectfully submits the rejection of claim 7 under 35 U.S.C. §103(a) over Woodland Fish and Wildlife in view of Rayborn is now moot.

Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife. Responsive to the above-recited rejection, Applicant has canceled claims 23, 24, and 26 and incorporated the limitations contained therein into claim 1. Applicant accordingly respectfully submits the rejection of claims 14 and 15 under 35 U.S.C. §103(a) over Woodland Fish and Wildlife is now moot.

Claims 16 and 18-21 stand rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Copps (U.S. Patent No. 4,982,702). Responsive to the above-recited rejection, Applicant has canceled claims 23, 24, and 26 and incorporated the limitations contained therein into claim 1. Applicant

accordingly respectfully submits the rejection of claims 16 and 18-21 under 35 U.S.C. §103(a) over Woodland Fish and Wildlife in view of Copps is now moot.

Claim 22 stands rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Copps further in view of McDermott et al. (U.S. Patent No. 2,618,237 – hereinafter referred to as McDermott). Responsive to the above-recited rejection, Applicant has canceled claims 23, 24, and 26 and incorporated the limitations contained therein into claim 1. Applicant accordingly respectfully submits the rejection of claim 22 under 35 U.S.C. §103(a) over Woodland Fish and Wildlife in view of Copps further in view of McDermott is now moot.

Applicant further respectfully submits that McDermott in fact does not disclose a cantilevered trough. McDermott discloses a rim 16 that is a chamber forming a wall 20. The rim 16 surrounds a tank and defines a return drain cover portion 22 with an opening 23. The rim 16 in no way is cantilevered from the tank. McDermott accordingly does not disclose Applicant's trough assembly cantilevered off the front end of the stand assembly. McDermott certainly provides absolutely no disclosure that insects cannot climb to the water in the tank.

Claims 23-29 stand rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Lehmann (U.S. Patent No. 4,628,865). Claims 23, 24 and 26 have been canceled. Applicant accordingly respectfully submits the rejection of claims 23-29 under 35 U.S.C. §103(a) over Woodland Fish and Wildlife in view of Lehmann is now moot.

Applicant however has incorporated the limitation contained in claims 23, 24, and 29 into claim 1. Claim 1 as amended accordingly recites that the dispense cap coupled to a second end of the product tube includes dispense apertures sized to retain the food product within the product tube. Claim 1 has further been amended to recite that the food product stored in the product tube and available through the dispense apertures must be pecked from the dispense apertures by fowl. Applicant respectfully submits claim 1 as amended is patentable over Woodland Fish and Wildlife in view of Lehmann because that combination does not disclose Applicant's claimed dispense apertures.

Applicant's claimed invention includes dispense apertures sized to retain food product within the product tube such that fowl must peck food product from the dispense apertures in order to limit access to the food product by unwanted animals such as squirrels and raccoons. A feeder including a food product source with an unrestricted opening directly onto a ledge is easily accessible by unwanted animals such as squirrels and raccoons. An unwanted animal merely knocks food from the ledge onto the ground using a paw. Moreover, most, if not all, of the food product within the food product source may be dumped onto the ground because the unrestricted opening directly onto the ledge provides a continuous feed of food product from the food product source to the ledge and then to the ground.

Applicant accordingly presents the claimed invention to overcome the above-recited problem. In particular, Applicant employs dispense apertures sized to retain the food product within the product tube in order to limit access to the food product by unwanted animals. Only the pecking of the food product from the dispense apertures delivers the food product exterior to the dispense cap. Unwanted animals may attempt to dislodge the food product with their paws or teeth; nevertheless, this is difficult due to the size of the dispense apertures. Furthermore, Applicant's device includes a shield that lines the dispense apertures to prevent unwanted animals from enlarging the dispense apertures. The amount of food product that unwanted animals may access from Applicant's device accordingly is limited, thereby leaving the majority of food product for fowl.

Lehmann in contrast to the invention of claim 1 as amended provides no dispense apertures that restrict the amount of feed available to unwanted animals. Lehmann discloses a continuously operating quail feeder including a bin 11 having a plurality of openings 15 at a bottom end thereof that deliver feed onto a ledge 14a defined by a disc 14 that closes the bottom of the bin 11. The Lehmann quail feeder further includes sliding gates 17 disposed at a respective opening 15. The sliding gates 17 nevertheless do not maintain the feed within the bin 11. Lehmann clearly states that the sliding gates are held open due to friction and are merely provided to allow adjustment in the size of the openings 15 (See column 2, lines 44-55). Figure 3 clearly shows that the Lehmann quail feeder is designed for feed to freely flow from the bin 11 onto the ledge 14a via the openings 15 and sliding gates 17. The sliding gates 17 simply provide

absolutely no restriction on the flow of feed from the bin 11 onto the ledge 14a. The Lehmann quail feeder thus suffers the disadvantage described above. Particularly, an unwanted animal merely needs to knock feed from the ledge 14a onto the ground in order to retrieve feed from the Lehmann quail feeder. Furthermore, continued knocking of feed from the ledge 14a onto the ground creates a continuous flow of feed from the bin 11 onto the ledge 14a and then onto the ground until most, if not all, of the feed has been emptied from the bin 11.

Lehmann accordingly does not disclose Applicant's dispense apertures sized to retain food product within a product tube because the openings 15 and sliding gates 17 provide a completely unrestricted flow of feed from the bin 11 directly onto the ledge 14a. Lehmann further does not disclose that food product stored in a product tube and available through dispense apertures must be pecked from the dispense apertures by fowl because feed is continuously available on the ledge 14a. The ledge 14a continuously supplies feed because feed passes unrestricted from the bin 11 directly onto the ledge 14a via the openings 15 and sliding gates 17. It is therefore completely unnecessary for a fowl to peck feed from the openings 15 and sliding gates 17 in order to obtain feed from the Lehmann quail feeder because feed resides on the ledge 14a at all times. Applicant therefore respectfully submits claim 1 as amended is patentable over Woodland Fish and Wildlife in view of Lehmann because that combination simply fails to disclose Applicant's dispense apertures.

Responsive to the rejection of claim 25 over Woodland Fish and Wildlife in view of Lehmann, Applicant respectfully submits claim 25 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Responsive to the rejection of claim 27 over Woodland Fish and Wildlife in view of Lehmann, Applicant respectfully submits claim 27 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Responsive to the rejection of claim 28 over Woodland Fish and Wildlife in view of Lehmann, Applicant respectfully submits claim 28 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Responsive to the rejection of claim 29 over Woodland Fish and Wildlife in view of Lehmann, Applicant respectfully submits claim 29 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Claim 30 stands rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Lehmann further in view of Fisher (U.S. Patent No. 6,318,290). Responsive to the rejection of claim 30 over Woodland Fish and Wildlife in view of Lehmann further in view of Fisher, Applicant respectfully contends Fisher does not disclose a shield that lines the dispense apertures, thereby preventing small animals from enlarging the dispense apertures and removing excess amounts of the food product. Fisher discloses guards 88 installed over each of trays 78. The guards 88 merely cover a respective tray 78 and in no way line food dispensing slots 76 and food dispensing openings 72 to prevent small animals from enlarging the food dispensing slots 76 and the food dispensing openings 72. Applicant accordingly respectfully submits claim 30 is patentable over Woodland Fish and Wildlife in view of Lehmann further in view of Fisher because a guard 88 installed over a tray 78 does not in any way line dispense apertures to prevent the enlargement thereof.

Claims 31 and 32 stands rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Lehmann further in view of Falcone et al. (U.S. Patent No. 3,717,126 – hereinafter referred to as Falcone). Responsive to the rejection of claims 31 and 32 over Woodland Fish and Wildlife in view of Lehmann further in view of Falcone, Applicant respectfully submits claims 31 and 32 are patentable based upon the preceding arguments with respect to claim 1 as amended.

Claims 33-38 stand rejected under 35 U.S.C. §103(a) by Woodland Fish and Wildlife in view of Lehmann further in view of Adams (U.S. Patent No. 3,901,192).

Responsive to the rejection of claim 33 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully submits claim 33 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Responsive to the rejection of claim 34 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully contends Adams does not disclose height adjustment of

the bird feeder. Adams discloses a seed container 10 including a vertical central shaft 22 having a horizontal hole 30 therein suspended by a mounting element 34. The mounting element includes a wire bent to form a horizontal lower free end 36, a vertical middle portion 38, and an upper free end 40. The mounting element further includes a locking member 42. After attaching the upper free end 40, the horizontal lower free end 36 inserts into the horizontal hole 30 and the locking member 42 slides over the vertical central shaft 22 to lock the seed container 10 onto the vertical middle portion 38. The insertion of the horizontal lower free end 36 into the horizontal hole 30 locks in the seed container 10, thereby making it impossible for any adjustment in the height of the seed container 10 relative to the vertical middle portion 38. The locking member 42 slides along the horizontal lower free end 36; nevertheless, this movement allows placement of the locking member over the vertical central shaft 22 and thus in no way accomplishes any height adjustment. The vertical central shaft 22 includes a hole 26; however, the hole 26 is for a string and thus in no way provides for height adjustment. Applicant accordingly respectfully submits claim 34 is patentable over Woodland Fish and Wildlife in view of Lehmann further in view of Adams because the insertion of the horizontal lower free end 36 into the horizontal hole 30 precludes any adjustment in the height of the seed container 10 relative to the vertical middle portion 38.

Responsive to the rejection of claim 35 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully contends the mounting element 34 disclosed by Adams provides for no adjustment because the insertion of the horizontal lower free end 36 into the horizontal hole 30 precludes any adjustment in the height of the seed container 10 relative to the vertical middle portion 38.

Responsive to the rejection of claim 36 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully contends the mounting element 34 disclosed by Adams includes no downturn segment for rotational stability because the vertical middle portion 38 does not prevent rotation of the seed container 10 as asserted by the Examiner.

Responsive to the rejection of claim 37 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully submits claim 37 is patentable based upon the preceding

arguments with respect to claim 36.

Responsive to the rejection of claim 38 over Woodland Fish and Wildlife in view of Lehmann further in view of Adams, Applicant respectfully submits claim 38 is patentable based upon the preceding arguments with respect to claim 1 as amended.

Claim 47 has been added to recite that the fowl feeding device further includes a riser block secured to the dish and supporting the dispense cap thereon, thereby raising the dispense cap to a suitable pecking height for fowl. Applicant respectfully submits the cited prior art does not disclose the riser block recited in new claim 17.

The prior art made of record by the Examiner has been reviewed by Applicant and is deemed not to anticipate nor in any combination render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and consideration of the new claim. Applicant further earnestly solicits early allowance of the application.

Respectfully submitted,

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(210) 472-3535

DATE: 17 March 2005

BY:

  
Christopher L. Makay  
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ATTORNEY FOR APPLICANT

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. §1.10 on the date indicated below, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Express Mail No. EV 486463216 US

Date: 17 March 2005

  
Christopher L. Makay



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Cliff Hartsell

§ Atty. Docket No: H-0900.01

Application No: 10/606,007

§ Examiner: To Be Assigned

Filed: 25 June 2003

§ Group Art Unit: To Be Assigned

§

For: HARTSELL STATION QUAIL  
FEEDER

PETITION

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Alexandria, Virginia 22313-1450

Sir:

Applicant respectfully responds to the NOTICE OF INCOMPLETE  
NONPROVISIONAL APPLICATION mailed on 07 October 2003, in the subject case.

The original filing of this application was accomplished by a pro se inventor. The  
inventor has now retained the services of a licensed attorney. As such, applicant is  
submitting an executed Power of Attorney.

The Customer Service Center has deemed that the application was not complete.  
Applicant asserts that the original filing of the application did contain drawings and  
disclosure. As the subject filing did not include a single claim as prescribed by 35 U.S.C.  
112, Applicant respectfully requests conversion of the Nonprovisional Application to a  
Provisional Application in accordance with 37 CFR §1.53(c)(2). Pursuant to the cited  
statutes, Applicant has enclosed the fees associated with the proposed conversion,  
including: \$50.00 for processing fee for a Provisional application under 37CFR §1.17(q),  
\$80.00 for a provisional filing fee under 37CFR§1.16(k), and a petition fee of \$130.00  
under 37CFR§1.17(h). Additionally, Applicant requests an extension of one month in

response to the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION formalities letter. Extension fees in accordance with 37 CFR§1.17(a)(1) in the amount of \$55.00 are enclosed.

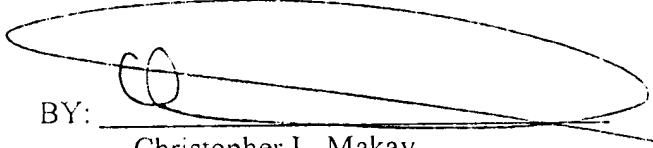
Applicant has further included a Provisional application cover sheet. Applicant respectfully requests that the newly converted application be accorded the original filing date of 25 June 2003, and all entitlements associated therewith.

Respectfully submitted,

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DATE: 17 December 2003

BY:

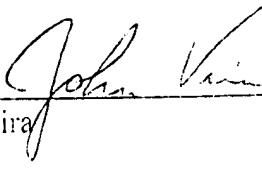
  
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John Viray